



**CALFED
BAY-DELTA
PROGRAM**

1416 Ninth Street, Suite 1155
Sacramento, California 95814

(916) 657-2666
FAX **(916) 654-9780**

March 4, 1999

J. Steve Chedester, Executive Director
San Joaquin River Exchange Contractors Water Authority
P. O. Box 2115
Los Banos, CA 93635

Dear Mr. Chedester:

Thank you for your recent comment letter on CALFED's Water Transfer Program. We appreciate the opportunity to clarify several important issues identified in your letter.

Regarding your statement that CALFED is proposing to prohibit the transfer of recaptured tailwater, we believe you may have misunderstood the purpose of that discussion in the document. That section was intended to summarize existing law and agency policy, and explain the issue as it has been presented to CALFED by various stakeholders. It is not the recommended resolution of the issue. Also, some text in this section has been modified since the Early Review Draft which should further clarify this question. Section 3.4.1 of the recently released Revised Draft Water Transfer Program Plan states:

"There is no disagreement that water consumed by the crop (evapotranspiration of applied water) is part of the consumptive use measure and that, if foregone, is transferrable. There is some dispute, however, whether surface water runoff (tailwater) which is not recaptured and reused, and which would otherwise be available to a downstream user, should be transferrable. (In other words, if it is permissible for the water user to recapture tailwater for his own use, thereby depriving the downstream user of its benefit, can he reduce his tailwater production by irrigation system improvements and transfer the saved water? Some argue that under current law, the "no injury" rule does not apply in the first case, but it does apply to water transfers when a water right change in place or purpose of use is required.)"

Simply put, CALFED recognizes that this is an issue. The issue appears to arise from a different interpretation of the "real water" test and the "no injury" rule. The State Board, DWR and USBR generally take the view that conserved tailwater which would otherwise return to the system is not transferable because it does not satisfy the "real water" test. There are, of course, exceptions to this general rule, particularly for transfers of CVP water within the CVP service area, or for transfers of SWP water within their service area.

CALFED Agencies

California The Resources Agency
 Department of Fish and Game
 Department of Water Resources
 California Environmental Protection Agency
 State Water Resources Control Board

Federal Environmental Protection Agency
 Department of the Interior
 Fish and Wildlife Service
 Bureau of Reclamation
 U.S. Army Corps of Engineers

Department of Agriculture
Natural Resources Conservation Service
Department of Commerce
National Marine Fisheries Service

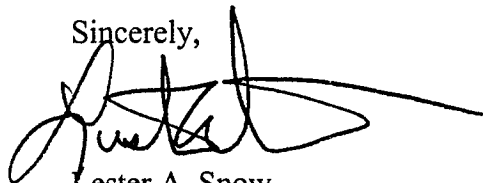
Where the "no-injury" rule does apply, it applies to all legal users of water without regard to seniority. One way to understand this is to consider what is really occurring when a senior water right holder petitions to temporarily change the existing place and purpose of use for purposes of transferring water to another user. The water associated with the temporary change petition really has the most junior right, since it is a change from a historic right. The Water Code allows all water users to protest the proposed change if the transfer would cause injury to their *legal* use of water. This challenge would be administered through the SWRCB when post-1914 water rights are involved and through the court system for pre-1914 water rights.

CALFED is not proposing that the State Water Resources Control Board expand its jurisdiction to include review of pre-1914 water rights as a result of developing transferrable water quantification guidelines. CALFED has suggested that the agencies with approval authority and jurisdiction over water transfers (i.e., SWRCB, DWR, and USBR) should attempt to produce a uniform and consistent set of guidelines and criteria on transferrable water, so that a transfer proponent will know from the outset how the determination of transferrable water will be made. Application of the guidelines will only occur when approval is necessary from any or all of the agencies. This is not applicable to a water transfer proposal involving pre-1914 water rights that does not require approval from any of these agencies (i.e., for wheeling or under CVPIA).

The clearinghouse concept has been widely supported among stakeholders participating in the CALFED process and there has been substantial discussion and debate over its scope and functions. The prevailing view seems to be that the clearinghouse should function primarily as a source of technical and baseline information and that it should ensure that water transfers are publicly disclosed. At this point, there has been no recommendation that the clearinghouse would have any type of approval authority over transfers, nor would it have the authority to require any analysis not required under existing law. Proposed transfers would be noticed through the clearinghouse by either DWR, USBR, or SWRCB, when any of them have an approval role as a public information function. Transfer information would be added to the clearinghouse data base. The clearinghouse could also be the mechanism for a public review or discussion of a proposed transfers if, for some reason, there was no such forum provided at the local agency level. In the vast majority of cases, as you point out, existing law such as CEQA will ensure an adequate public review process.

If you have further questions or wish to discuss any of your concerns in more detail, please contact Greg Young, CALFED's Water Transfer Program manager, at (916) 653-8400.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester A. Snow", with a long horizontal flourish extending to the right.

Lester A. Snow
Executive Director